

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

THEODORE W. OSWALD,

Plaintiff,

v.

Case No. 08- C-775

MICHAEL THURMER,

Defendant.

ORDER DENYING MOTION TO SUPPLEMENT RECORD

On September 15, 2008, Theodore Oswald, a state inmate, filed a petition for habeas corpus pursuant to 28 U.S.C. § 2254. Oswald's sole claim was based on the Double Jeopardy Clause of the Constitution. He had been convicted by a Waukesha County jury after a heavily publicized 1994 crime spree in which he and his father robbed a bank, took a hostage, and got in a shootout with the police. After unsuccessful state appeals, he successfully petitioned for habeas corpus in Federal District Court and that grant was affirmed by the Seventh Circuit in 2004. *See Oswald v. Bertrand*, 374 F.3d 475 (7th Cir. 2004).

Based upon the petition itself and the attachments thereto, I summarily dismissed Oswald's petition on the ground that the state court decisions denying his subsequent challenges did not amount to an unreasonable application of federal law. I also considered the Seventh Circuit decision affirming the previous grant of habeas corpus. Oswald has appealed from the summary dismissal of his petition and now seeks to supplement the record by adding the transcript of the voir dire proceedings from his first trial.

The motion will be denied. This Court did not review the transcript of the voir dire proceedings, other than as they are recounted in the previous decisions in the state and federal courts that have addressed the matter. If the Court's summary dismissal of the claim was erroneous, the case will be remanded and a full record will be reviewed. At this point, however, there is no basis upon which to supplement the record by adding material that was not before the Court when it rendered its decision. Accordingly, the motion to supplement the record is denied.

SO ORDERED this 21st day of October, 2008.

s/ William C. Griesbach
William C. Griesbach
United States District Judge